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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/332,863	06/15/1999	TERESITA VERGARA IMPERIAL	REV-99-10	3442

7590 06/10/2003  
WARD AND OLIVA  
708 THIRD AVENUE  
NEW YORK, NY 10017

EXAMINER

MRUK, BRIAN P

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Applicati n No.

09/332,863

Applicant(s)

IMPERIAL, TERESITA VERGARA

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-98 is/are pending in the application.
- 4a) Of the above claim(s) 69-97 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-68 and 98 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 30, 2003 has been entered.

This Office action is in response to Applicant's amendment filed May 30, 2003. By amendment, applicant has amended claims 25 and 54. Claims 69-97 remain nonelected. Currently, claims 25-98 remain pending in the application.

2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 13 and 16.

3. The rejection of claim 54 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendment and remarks.

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4. The rejection of claims 25, 59 and 60 under 35 U.S.C. 102(b) as being anticipated by Henkel, DE 2,624,690, is withdrawn in view of applicant's amendments and remarks.
5. The rejection of claims 26-42 under 35 U.S.C. 103(a) as being unpatentable over Henkel, DE 2,624,690, is withdrawn in view of applicant's amendments and remarks.
6. The rejection of claims 25-47, 50-53, 55-68 and 98 under 35 U.S.C. 102(a) as being anticipated by Goldwell, DE 19721785, is withdrawn in view of applicant's amendments and remarks.
7. The rejection of claims 48-49 under 35 U.S.C. 103(a) as being unpatentable over Goldwell, DE 19721785, in view of Yoshihara, U.S. Patent No. 5,332,581, is withdrawn in view of applicant's amendments and remarks.

#### **NEW GROUNDS OF REJECTION**

##### ***Specification***

8. The amendment filed May 30, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment

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shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The instant specification does not provide support for the newly added claim limitations "approximately 1 part by weight of a powder bleach composition", "approximately 1.5 to about 5 parts by weight of an aqueous developer composition", and "approximately 1.5 to about 5 parts by weight of an aqueous based hair colorant" in instant claim 25.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

9. Claim 45 is objected to because of the following informalities: The phrase "a oil-in-water" should be amended to recite "an oil-in-water" for grammatical purposes.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

10. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

11. Claims 25-68 and 98 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. Specifically, the instant specification does not provide support for the newly added claim limitations "approximately 1 part by weight of a powder bleach composition", "approximately 1.5 to about 5 parts by weight of an aqueous developer composition", and "approximately 1.5 to about 5 parts by weight of an aqueous based hair colorant" in instant claim 25.

Claims 26-68 and 98 are rejected under 35 U.S.C. 112, first paragraph, for being dependent upon claim 25.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 27, 32-40, 42, 52, 57, 59, 62, 64, 66 and 68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Instant claim 27 recites that the "powder bleach composition comprises 15-65% by weight of the total composition of one or more inorganic persulfates". This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the one or more inorganic persulfates is based on the weight of the total composition, or if the recited weight percentage of the one or more inorganic persulfates is based on the total weight percentage of the powder bleach composition (i.e. 15-65% of 1% from claim 25).

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15. Instant claim 32 recites that the “powder bleach composition comprises 5-60% by weight of the total composition of said particulate fillers”. This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the particulate fillers is based on the weight of the total composition, or if the recited weight percentage of the particulate fillers is based on the total weight percentage of the powder bleach composition (i.e. 5-60% of 1% from claim 25).

16. Instant claim 42 recites that the “inorganic colorants comprise 0.01-2% of an inorganic colorant”. This renders the claim vague and indefinite, since it is unclear how an inorganic colorant can comprise 0.01-2% of an inorganic colorant.

17. Instant claim 52 recites that the “nonionic surfactant comprises 0.01-10% by weight of said composition”. This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the nonionic surfactant is based on the weight of the total composition, or if the recited weight percentage of the nonionic surfactant is based on the total weight percentage of the aqueous developer composition (i.e. 0.01-10% of 1.5-5% from claim 25).

18. Instant claim 57 recites that the “thickening agent comprises 0.0001-5% by weight of said composition”. This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the thickening agent is based on the weight of the total composition, or if the recited weight percentage of the thickening agent is

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based on the total weight percentage of the aqueous developer composition (i.e. 0.0001-5% of 1.5-5% from claim 25).

19. Instant claim 59 recites that the "cationic dye compound comprises 0.001-10% by weight of said composition". This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the cationic dye compound is based on the weight of the total composition, or if the recited weight percentage of the cationic dye compound is based on the total weight percentage of the aqueous based hair colorant composition (i.e. 0.001-10% of 1.5-5% from claim 25).

20. Instant claim 62 recites that the "cationic surfactant comprises 0.001-10% by weight of said composition". This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the cationic surfactant is based on the weight of the total composition, or if the recited weight percentage of the cationic surfactant is based on the total weight percentage of the aqueous based hair colorant composition (i.e. 0.001-10% of 1.5-5% from claim 25).

21. Instant claim 64 recites that the "oily ingredients comprises 0.001-20% by weight of said composition". This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the oily ingredients is based on the weight of the total composition, or if the recited weight percentage of the oily ingredients is based on the



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total weight percentage of the aqueous based hair colorant composition (i.e. 0.001-20% of 1.5-5% from claim 25).

22. Instant claim 66 recites that the "humectants comprises 0.01-10% by weight of said composition". This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the humectants is based on the weight of the total composition, or if the recited weight percentage of the humectants is based on the total weight percentage of the aqueous based hair colorant composition (i.e. 0.01-10% of 1.5-5% from claim 25).

23. Instant claim 68 recites that the "protein derivatives comprises 0.01-15% by weight of said composition". This renders the claim vague and indefinite, since it is unclear if the recited weight percentage of the protein derivatives is based on the weight of the total composition, or if the recited weight percentage of the protein derivatives is based on the total weight percentage of the aqueous based hair colorant composition (i.e. 0.01-15% of 1.5-5% from claim 25).

24. Instant claims 33-40 are rejected under 35 U.S.C. 112, second paragraph, for being dependent upon a claim with the above addressed 112 problem.

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### Response to Arguments

25. Applicant's arguments with respect to claims 25-68 and 98 have been considered but are moot in view of the new ground(s) of rejection.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk  
June 8, 2003

*Brian P. Mruk*

Brian P. Mruk  
Patent Examiner  
Tech Center 1700